

1 3. Are enforcement costs incurred by the United States
2 associated with the Site.

3 G. Nothing in this Consent Decree shall constitute or be
4 construed as a release from, or a covenant not to sue regarding,
5 any claim, cause of action, or demand in law or equity against
6 any person, firm, trust, joint venture, partnership, corporation
7 or other entity not a signatory to this Consent Decree for any
8 liability it may have arising out of or relating to the Site.

9 H. The Settling Parties agree that the United States shall
10 be under no obligation to assist Settling Defendants in any way
11 in defending against suits for contribution brought against Set-
12 tling Defendants, including any which allege liability for mat-
13 ters covered by this covenant not to sue.

14 XIX. STIPULATED PENALTIES

15 A.1. Unless excused by EPA or a force majeure event,
16 Lockheed shall be liable for stipulated penalties to the United
17 States, as set forth in Subpart D of this Section, for each
18 failure by Lockheed to comply with the requirements of this Con-
19 sent Decree. Lockheed shall not be liable for stipulated
20 penalties for failure to meet requirements that are solely the
21 obligation of the City pursuant to this Decree.

22 2. Unless excused by EPA or a force majeure event, the City
23 shall be liable for stipulated penalties to the United States, as
24 set forth in Subpart E of this Section, for each failure by the
25 City to comply with the requirements of this Consent Decree. The
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1 City shall not be liable for stipulated penalties for failure to
2 meet requirements that are solely the obligation of Lockheed pur-
3 suant to this Decree.

4 B.1. Any reports, plans, specifications, schedules,
5 deliverables, appendices, and attachments required by this Decree
6 or the Statement of Work, are, upon approval by EPA, incorporated
7 into this Decree. A failure by a Settling Work Defendant to
8 comply with applicable EPA-approved reports, plans, specifica-
9 tions, schedules, deliverables, appendices, or attachments shall
10 be considered a failure to comply with this Decree and shall sub-
11 ject that Settling Work Defendant to stipulated penalties as
12 provided in Subpart D or E of this Section.

13 2. Failure to comply with this Consent Decree shall also
14 include but is not limited to the following:

15 a. Failure to submit deliverables specified in this
16 Consent Decree or the Statement of Work in an acceptable manner
17 and by the date due pursuant to this Decree; provided, however,
18 that if the failure to comply results from a determination by EPA
19 that a written deliverable is inadequate, the Settling Work
20 Defendant required to submit the draft deliverable shall have ten
21 (10) working days from receipt of EPA's written notice of disap-
22 proval, or such other longer time period as provided by EPA in
23 the notice of disapproval, within which to correct the inadequacy
24 and resubmit the deliverable for approval. Any disapproval by
25 EPA shall include an explanation of why the deliverable is inade-
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1 quate. If the resubmitted deliverable is inadequate, the Set-
2 tling Work Defendant required to submit the deliverable shall be
3 deemed to be in violation of this Decree.

4 b. Failure by a Settling Work Defendant to use best
5 efforts to obtain any permits necessary for offsite Work which
6 that Settling Work Defendant is required to perform or failure by
7 a Settling Work Defendant to use best reasonable efforts to ob-
8 tain necessary access agreements.

9 c. Failure to comply with any permit obtained for the
10 purpose of implementing the requirements of this Consent Decree
11 in any offsite location.

12 C. Stipulated penalties for failure to perform any require-
13 ment of this Consent Decree for which a deadline is specified
14 shall begin to accrue on the first day after the deadline.
15 Stipulated penalties for any other violation of this Consent
16 Decree shall begin to accrue on the first day after the Settling
17 Work Defendant(s) subject to penalties receive(s) notice from EPA
18 of such violation. For any violation, stipulated penalties shall
19 continue to accrue up to and including the day on which the non-
20 compliance is corrected. EPA, in its sole discretion, may waive
21 or reduce stipulated penalties. If EPA does not waive stipulated
22 penalties, EPA shall provide the Settling Work Defendant(s) sub-
23 ject to penalties with written notice of the alleged deficiency
24 in compliance with this Decree, and accrued stipulated penalties
25 shall become payable thirty (30) days after Settling Work
26 Defendant's receipt of EPA's written notice of deficiency;
27 provided, however, that if EPA provides notice of an alleged

1 deficiency, and that deficiency continues, EPA shall not be re-
2 quired to provide any additional notice in order for stipulated
3 penalties to continue to accrue and become payable.

4 D. With respect to Lockheed, stipulated penalties shall ac-
5 crue in the following amounts, and, as provided in Subpart H of
6 Section XVII (Reservation and Waiver of Rights), Lockheed may not
7 dispute the amount of stipulated penalties due per type of viola-
8 tion:

9 1. Monthly Progress Reports and Quarterly Quality Assurance
10 Reports

11 (a). Lockheed shall pay a stipulated penalty of \$1,000 per
12 day for the submission of a late or deficient Monthly Progress
13 Report.

14 (b) Lockheed shall pay a stipulated penalty of \$1,000 per
15 day for the submission of a late or deficient Quarterly Quality
16 Assurance Report.

17 2. MCL Effluent Violations

18 (a). At any time after the first sixty (60) days after the
19 System Operation Date for each phase, if the concentration of TCE
20 in the treated water is greater than 5.0 ppb, Lockheed shall be
21 considered to have been out of compliance for each day for which
22 the representative treated water sample (as defined in Subpart
23 J.1 of Section VII (Work to Be Performed)) indicates that the
24 concentration of TCE was greater than 5.0. ppb. Lockheed shall
25 be subject to stipulated penalties in the amount of \$5,000 per
26 day for each such day of noncompliance.

1 (b). At any time after the first sixty (60) days after the
2 System Operation Date for each phase, if the concentration of PCE
3 in the treated water is greater than 5.0 ppb, Lockheed shall be
4 considered to have been out of compliance for each day for which
5 the representative treated water sample (as defined in Subpart
6 J.1 of Section VII (Work To Be Performed)) indicates that the
7 concentration of PCE was greater than 5.0 ppb. Lockheed shall be
8 subject to stipulated penalties in the amount of \$5,000 per day
9 for each such day of noncompliance.

10 (c) At any time after the first sixty (60) days after the
11 System Operation Date for each phase, if the concentration of a
12 volatile organic compound ("VOC") other than TCE or PCE in the
13 treated water is greater than the MCL in effect at that time for
14 such VOC, Lockheed shall be considered to have been out of com-
15 pliance for each day for which the representative treated water
16 sample (as defined in Subpart J.1 of Section VII (Work To Be
17 Performed)) indicates that the concentration of that VOC was
18 greater than the MCL in effect, provided that the MCL in effect
19 was promulgated on or before January 31, 1991. Lockheed shall be
20 subject to stipulated penalties in the amount of \$5,000 per day
21 for each such day of noncompliance.

22 (d) At any time after the first sixty (60) days after an
23 analytical sample result shows that the concentration of a con-
24 taminant in the treated water other than a VOC or nitrate is
25 greater than the MCL in effect at that time for such contaminant,
26 Lockheed shall be considered to have been out of compliance for
27 each day for which the representative treated water sample (as

1 defined in Subpart J.1 of Section VII (Work To Be Performed)) in-
2 dicates that the concentration of that contaminant was greater
3 than the MCL in effect, provided that the MCL in effect was
4 promulgated on or before January 31, 1991. Lockheed shall be
5 subject to stipulated penalties in the amount of \$3,000 per day
6 for each such day of noncompliance.

7 3. Class I Violations

8 Period of Noncompliance Penalty Per Day Per Violation

9 Days 1 - 5 \$1,000

10 Days 6 - 30 \$2,500

11 After 30 Days \$5,000

12 (a). Each failure to comply in a timely and adequate manner
13 with the terms of this Consent Decree, including the Statement of
14 Work, and any documents incorporated into this Decree pursuant to
15 this Decree, that are not specifically listed as a violation
16 anywhere else under Subparts D.1 or D.2 of this Section or under
17 this Class I or under Classes II or III, and specifically includ-
18 ing any failure to comply with the substantive standards of any
19 applicable or relevant and appropriate requirement identified in
20 the ROD (as modified by the ESD and Subpart F of Section VII
21 (Work To Be Performed)) not identified as a violation under Sub-
22 parts D.1 or D.2 of this Section or under Class II or Class III,
23 provided that Lockheed shall not be subjected to stipulated
24 penalties for any requirement of this Decree that is solely the
25 obligation of the City pursuant to this Decree.

26 (b). Failure to submit any of the following:

27 i. Draft Conceptual Design Report(s)

- 1 ii. Draft Pre-Final Design Report(s)
2 iii. Draft Remedial Action Work Plan(s)
3 iv. Draft Remedial Design Work Plan(s)
4 v. Draft Preliminary Sampling Plan
5 vi. Draft Interim Remedial Action Report(s)
6 vii. Notification of Selection of RD
7 Architect/Engineer
8 viii. Notification of Selection of RA Engineer
9 ix. Notification of Selection of RA
10 Contractors/Subcontractors
11 x. Draft Plan(s) for Satisfaction of Permit
12 Requirements
13 ix. Draft QA Project Plan(s)
14 x. Draft Operational Sampling Plan(s)
15 xi. Draft Operation and Maintenance Plan(s)
16 xii. Notification of Selection of Independent
17 Quality Assurance Team
18 (c) Each violation of the following:
19 i. Obligation to hold Preconstruction Conference(s)
20 ii. Obligation to hold Pre-Final Inspection(s)
21 iii. Obligation to hold Final Inspection(s)
22 iv. Applicable or Relevant and Appropriate Require-
23 ments, other than MCL violations
24 and South Coast Air Quality Management District
25 Regulation XIII
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1 4. Class II Violations

2	<u>Period of Noncompliance</u>	<u>Penalty Per Day Per Violation</u>
3	Days 1 - 5	\$2,000
4	Days 6 - 30	\$4,000
5	After 30 Days	\$10,000

6 (a). Failure to submit any of the following:

- 7 i. Draft Final Remedial Design Report(s)
- 8 ii. Final Pre-Final Design Report(s)
- 9 iii. Final Health and Safety Plan(s)
- 10 iv. Final Preliminary Sampling Plan
- 11 v. Final Interim Remedial Action Report(s)
- 12 vi. Plan(s) for Satisfaction of Permit Requirements
- 13 vii. Remedial Design Workplan(s)
- 14 viii. Conceptual Remedial Design Report(s)

15 (b). Each violation of the following:

- 16 i. QA Project Plan(s)
- 17 ii. Remedial Design Work Plan(s)
- 18 iii. Plan(s) for Satisfaction of Permit Requirements
- 19 iv. California South Coast Air Quality Management
- 20 District Regulation XIII
- 21 v. Preliminary Sampling Plan
- 22 vi. Remedial Action Work Plan(s)

23 5. Class III Violations

24	<u>Period of Noncompliance</u>	<u>Penalty Per Day Per Violation</u>
25	Days 1 - 5	\$5,000
26	Days 6 - 30	\$8,000
27	Days 30-60	\$15,000

\$20,000

- i. Final Remedial Design Report(s)
- ii. Remedial Action Work Report(s)
- iii. Operation & Maintenance Plan(s)
- iv. Final QA Project Plan(s)

- i. Operation & Maintenance Plan(s)
- ii. Operation Sampling Plan(s)

1. Monthly Progress Reports and Quarterly Quality Assurance Reports

(b) The City shall pay a stipulated penalty of \$500 per day for the submission of a late or deficient Quarterly Quality Assurance Report.

Period of Noncompliance

Days 1 - 5	\$500
Days 6 - 30	\$1,000
After 30 Days	\$2,500

1 (a). Each failure to comply in a timely and adequate manner
2 with the terms of this Consent Decree, including the Statement of
3 Work, and any documents incorporated into this Decree pursuant to
4 this Decree, that are not specifically listed as a violation un-
5 der Class II, and specifically including any failure to comply
6 with the substantive standards of any applicable or relevant and
7 appropriate requirement identified in the ROD (as modified by the
8 ESD and Subpart F of Section VII (Work To Be Performed)) not
9 identified as a violation under Class II; provided that the City
10 shall not be subjected to stipulated penalties for any require-
11 ment of this Decree that are solely the obligation of Lockheed
12 pursuant to this Decree.

13 3. Class II Violations

14 <u>Period of Noncompliance</u>	<u>Penalty Per Day Per Violation</u>
15 Days 1 - 5	\$1,000
16 Days 6 - 30	\$3,000
17 After 30 Days	\$10,000

18 (a). Failure to submit any the following:

- 19 i. Plan for Satisfaction of Permitting
20 Requirements
21 ii. QA Project Plan (or equivalent document(s)
22 pursuant to Subpart E of Section VIII
23 (Quality Assurance))
24 iii. Health and Safety Plan
25 iv. Operation and Maintenance Plan

26 (b). Failure to comply with any of the following:

- 27 i. Plan for Satisfaction of Permitting

Requirements

**ii. QA Project Plan (or equivalent document(s)
pursuant to Subpart E of Section VIII
(Quality Assurance))**

iii. Health and Safety Plan

iv. Operation and Maintenance Plan

F. All stipulated penalties owed pursuant to this Decree shall be paid by certified check made payable to the "EPA-Hazardous Substance Superfund" within thirty (30) days after receipt of EPA's notice of deficiency by the Settling Work Defendant that it failed to meet a requirement of this Decree. Interest shall begin to accrue on any penalty due thirty (30) days after that Settling Work Defendant receives EPA's notice of deficiency. A copy of the check and a copy of the letter forwarding the check, which letter shall include a brief description of the alleged violation, Settling Work Defendant's complete and correct address, the Operable Unit name, the Site spill identifier number (SSID #L6), the civil action number, and the date of receipt of EPA's notice of deficiency shall be submitted to the EPA Project Coordinator, the EPA Assistant Regional Counsel, and the United States Department of Justice at the addresses to which notice is to be provided pursuant to Section XXIII (Form of Notice). The check and the original copy of the letter shall be sent to:

**U.S. Environmental Protection Agency
Region IX
Superfund Accounting
P.O. Box 360863M
Pittsburgh, PA 15251
Attention: Collection Officer for Superfund**

1 If a Settling Work Defendant fails to pay stipulated penalties in
2 accordance with this Section, the United States may institute
3 proceedings in this action or a new action to collect the
4 penalties and any interest due.

5 G. Notwithstanding the stipulated penalties provided for
6 in this Section, and to the extent authorized by law, EPA may
7 elect to assess civil penalties or bring an action in District
8 Court to enforce the provisions of this Consent Decree. Payment
9 of stipulated penalties shall not preclude EPA from electing to
10 pursue any other remedy or sanction it may have to enforce this
11 Consent Decree, and nothing in this Decree shall preclude EPA
12 from seeking statutory penalties against a Settling Defendant who
13 violates statutory or regulatory requirements, except that the
14 total civil penalties (including stipulated penalties) collected
15 by EPA for any such violation shall not exceed \$25,000 per day
16 per violation.

17 H. Each Settling Work Defendant may dispute any notice of
18 deficiency issued to it. Penalties shall continue to accrue as
19 provided in this Section but need not be paid until the follow-
20 ing:

21 1. If the dispute is resolved by agreement or by decision
22 or order of EPA which is not appealed to this Court, accrued
23 penalties, plus interest at the rate specified in 28 U.S.C. §
24 1961, shall be paid to EPA within thirty (30) days of the agree-
25 ment or Settling Work Defendant's receipt of EPA's decision or
26 order;
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